

FCG VALUATION CASE E-FLASH

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Issue 13:1**

Estate of Saul Schneider, Appellant, v. Victor M. Finmann, et al., Respondents, et al., Defendant
New York Court of Appeals, No. 104, June 17, 2010

In a unanimous ruling, the New York Court of Appeals (the state's highest court) determined that an estate can bring a legal malpractice suit against an attorney for damages associated with negligent representation which resulted in a larger estate tax liability.

TAKEAWAY

Privity: n. contact, connection or mutual interest between parties. The term is particularly important in the law of contracts, which requires that there be "privity" if one party to a contract can enforce the contract by a lawsuit against the other party. Thus, a tenant of a buyer of real property cannot sue the former owner (seller) of the property for failure to make repairs guaranteed by the land sales contract between seller and buyer since the tenant was not "in privity" with the seller.¹

THE FACTS

Decedent purchased a \$1 million life insurance policy in 2000. Over the course of several years, he transferred the policy to an entity of which he was the primary owner and then to another entity of which he was primary owner. In 2005, he transferred the policy back to himself. When he died in October of 2006, the proceeds from the life insurance policy were included in his gross taxable estate.

Decedent's estate asserted that decedent's attorney failed to properly advise decedent of estate tax implications of transferring the policy back to himself. Two lower courts held for the attorney and against the estate based on the estate's lack of privity.

CONCLUSION

The Court of Appeals determined "that privity, or a relationship sufficiently approaching privity, exists between the personal representative of an estate and the estate planning attorney." The Court was clear, however, that privity extends only to the personal representative and not to beneficiaries or other third parties. Further, "relaxing privity to permit third-parties to commence professional negligence actions against estate planning attorneys would produce undesirable results – uncertainty and limitless liability."

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¹ <http://dictionary.law.com/Default.aspx?selected=1617>